The Honorable David Camp, Chairman
The Honorable Sander M. Levin, Ranking Member
United States House of Representatives
Committee on Ways and Means
1102 Longworth House Office Building
Washington D.C. 20515

May 26, 2011

Testimony to the Committee on Ways and Means Regarding the Need for Comprehensive Tax Reform to Help American Companies Compete in the Global Market and Create Jobs for American Workers

Dear Mr. Chairman Camp and Congressman Levin,

The associations co-signing this letter appreciate the opportunity to submit written testimony to the Committee on Ways and Means, as requested by the announcement of May 5, 2011. All of the undersigned are non-profit, non-partisan associations representing regional groups of American business councils and chambers of commerce based in Canada, Europe, the Middle East and the Far East, as well as the interests of American citizens working and residing overseas.

The focus of our testimony is on the need to reform the U.S. tax code to make American companies and individuals more competitive in today's global economy and increase exports from the United States to international markets, thereby generating much-needed U.S. jobs. We are honored to submit for your consideration some observations and recommendations based on the experience of our members as American businesses and individuals competing in very challenging foreign markets.

Increasing competitiveness of U.S. taxpayers must be oriented to significantly increase domestic investment and to reduce, and hopefully eliminate, the foreign trade deficit with the rest of the world. Domestic manufacturing must be encouraged to create good paying jobs in the U.S. Hence, enhancing competitiveness requires encouraging domestic investment and encouraging exports. To this end, we have three recommendations:

- **Adopt territorial taxation for U.S. corporations and simultaneously lower corporate tax rates and eliminate the "tax expenditures" and special tax breaks offered to specific industries**
- **Ensure American taxpayers overseas compete on a "level playing field"**
- **Eliminate the cap on the Foreign Earned Income Exclusion (FEIE) under Section 911 of the Internal Revenue Code**

Adopt territorial taxation for U.S. corporations and simultaneously lower corporate tax rates and eliminate the "tax expenditures" and special tax breaks offered to specific industries

This is the fundamental recommendation of the "Moment of Truth", the December 1, 2010 report of the President's National Commission on Fiscal Responsibility and Reform. The undersigned organizations broadly concur with this recommendation. It is certainly a necessary measure to take. A carefully designed package along these lines, lowering corporate tax rates to the 20% to 22% range would significantly enhance U.S. competitiveness, bringing the tax rates into line with those of most other countries with whom the United States competes. By eliminating the "tax expenditures" and specific subsidies to particular industries, the measure would be tax neutral and may even increase revenues. Equally important, it would close loopholes that lead to inequitable tax treatment and would greatly simplify the tax law and compliance.

In order to give U.S. corporations a real competitive advantage, Congress should lower the corporate income tax rate below 20% since higher U.S. taxes correspond to lower investment returns and hence a competitive disadvantage. The current Canadian government intends to cut corporate income tax from 21% to 15% over the next five years.[i] With all of the other dynamics and economies of scale of the U.S. economy, low corporate tax rates and a greatly simplified tax administration would provide the United States with a significant competitive edge.

Adopting territorial taxation is fundamental to any meaningful corporate tax reform, as all other industrialized nations practice territorial taxation. Adopting territorial taxation would not reduce tax revenue, as under current law, most corporate earnings realized abroad are not repatriated to the United States and, hence, there is little tax revenue from foreign earnings of U.S. corporations. Adopting territorial taxation would put the United States on a level playing field when corporations decide where to invest and develop manufacturing capacity. Adopting territorial taxation would liberate the more than $1 trillion of overseas profits of U.S. corporations currently blocked overseas due to the penalizing tax situation. United States corporations would be able to repatriate the funds to invest in new manufacturing and research facilities in America. Even if some of these repatriated funds are applied to reduction of domestic corporate debt or to increase dividend payments to shareholders, the funds will stimulate the U.S. economy and produce tax revenue. This is far better than having the money lie fallow in foreign banks or invested in competing economies.

Equally important, lowering the tax rates and simplifying the tax compliance requirements will greatly encourage foreign investment in the United States. At today's exchange rates, the United States is a low cost country. Increased direct foreign investment would stimulate job creation in the United States and lower imports. Over the long term it would lead to an increase in exports.

Those who argue for global taxation of U.S. corporations by eliminating the deferral of taxation on foreign earnings do not recognize the dynamics of worldwide competition. If the U.S. tax rates on corporate earnings remain higher than foreign competition and global taxation is instituted, many corporations will simply change their legal domicile or create other legal structures to build more business from a foreign base. If under global taxation, U.S. tax rates are lowered to competitive

international levels, the United States would not realize significant tax revenue from the overseas operations of its companies, as foreign tax credits would be comparable or higher than U.S. tax liability. The only way to enhance U.S. competitiveness is to adopt territorial taxation.

Ensure American taxpayers overseas compete on a "level playing field"

The corollary of territorial taxation is that any business activity undertaken by an American entrepreneur or worker residing and working overseas should be subject only to the taxes in the country of economic activity and domicile. This measure alone would truly enhance the competitiveness of Americans abroad, putting them on an equal footing with their foreign competitors. No one can promote U.S. exports better than an American working overseas as an importer and distributor of American goods or professional service provider representing American interests.

But today, American business people working abroad are unfairly affected by U.S. rules and regulations when compared to nationals from other countries that do not tax their citizens on income earned overseas. The cumulative impact of these various rules and regulations makes it extremely difficult if not impossible to do business successfully overseas. It leads to a negative environment for U.S. businessmen abroad.

First, an American citizen starting up his or her own business activity abroad, whether alone or in association with foreigners, must file either I.R.S. Form 5471, 8865 or 8858, which are described by tax professionals as administrative monsters. According to the I.R.S. itself, Form 5471 alone requires 80 hours to prepare. Reporting to the I.R.S. creates a serious unfair burden of double reporting and submission to arbitrary rules which systematically lead to penalization of Americans abroad. Something is fundamentally wrong when an American entrepreneur working abroad can be paying higher taxes in the country where he resides than an American in a comparable economic situation residing in the United States, and yet the overseas American still owes taxes to the United States.

Second, an American working abroad must contribute to U.S. social security and Medicare. This U.S. tax requirement is inequitable as American entrepreneurs abroad already contribute to the social security and medical programs in the country where they live. The requirement to contribute to Medicare is inherently and intrinsically unfair given that an American residing abroad does not have access to Medicare which is available only in the United States. The U.S. Social Security Administration has entered into totalization agreements with only 17 countries, subjecting many American entrepreneurs worldwide to double taxation. Even for those living in countries with totalization agreements, the reporting burden leads to a competitive disadvantage.

Third, the increased tax filing burden includes reporting not only to the I.R.S. in addition to filing in the country of residence, but also filing with the Treasury for the FBAR report and starting with fiscal year 2011, filing Form 8938, required by the FATCA legislation passed in March 2010, to report all foreign financial assets. This requirement to file all foreign financial assets, which the I.R.S. is defining in the broadest sense, is specifically discriminatory towards Americans working and residing overseas, and

represents an inappropriate extraterritorial application of U.S. law. Cumulative penalties on inaccurate FBAR and FATCA reporting are so severe that they are confiscatory; Americans working abroad are being treated *de facto* as presumptive tax evaders and criminals.

Fourth, the FATCA requirement that any foreign corporation or partnership with 10% U.S. ownership must report to the IRS is already shutting out American citizens abroad from entering into business ventures with foreigners. FATCA has converted Americans into the pariahs in the international business world. Foreign banks are closing bank accounts owned by American citizens or by a corporation with just partial American ownership; the perceived legal and financial risks combined with the heavy administrative burden imposed on foreign financial institutions by FATCA are making them very restrictive in their dealing with American citizens.

Fifth, the FBAR requirement to file financial account information on any account over which an American has signatory power but no financial interest is shutting American citizens out of job opportunities overseas. Disclosing such information of an employer is a criminal offense in many countries. This U.S. reporting requirement constitutes a counterproductive extension of U.S. rules to international settings and fails the cost/benefit analysis given the large number of financial institutions which are effectively precluded from hiring U.S. staff.

The Committee's efforts toward increasing competitiveness of American business abroad should include a critical review of the tax and reporting requirements for American business people operating overseas. Territorial taxation should be adopted. In parallel, FBAR and FATCA legislation should be significantly changed to eliminate the chains that are restricting business development by Americans abroad. Furthermore, the reporting requirements should be melded into one form and penalties for errors in reporting should be brought down into the range of reasonable, not confiscatory.

Eliminate the cap on the Foreign Earned Income Exclusion (FEIE) under Section 911 of the Internal Revenue Code

While Section 911 may on the surface appear to concern taxation of individuals, it is in fact an indirect tax on U.S. companies sending American staff abroad. It is usual for U.S. companies who ask their employees to relocate abroad to pay the additional expenses that the employee will incur in connection with the relocation, such as moving expenses for furniture, cars and household goods; airfare for the employee's family; tuition for English language school; overseas housing expenses; and in some cases an additional overseas allowance to compensate for the additional cost of living. The payment of such expenses are deemed to be taxable income of the American employee (in contrast to the treatment of State Department employees working in overseas embassies or other U.S. federal government workers who are not taxed upon such benefits). Because of the cap on the foreign earned income exclusion, U.S. companies generally must provide additional compensation to the employee to compensate him or her for the additional tax burden resulting from the overseas assignment. This compensation is then added to the taxable income in the following year, thereby increasing once again the cost of hiring Americans abroad to the point of making American overseas staff completely uncompetitive. The logical and

inevitable consequence is that U.S. companies operating overseas, as rational economic actors, time and time again will hire foreigners (many of whom are educated in the United States) for overseas positions rather than Americans.

The underrepresentation of American citizens abroad representing U.S. business interests creates a serious long-term competitive disadvantage as Americans do not gain the international experience required in today's global environment. By penalizing foreign-based corporations for hiring Americans, Congress has eliminated American voices at both operational and boardroom level decision making.

Eliminating the cap on the foreign earned income exclusion under Section 911 of the tax code would bring the legislation back to its original purpose (prior to 1962), i.e., encourage Americans to work abroad and U.S. companies to send their professional staff overseas. It must also be said that every time a U.S. corporation replaces an American abroad by a foreigner, job opportunities for American citizens decline. It must also be emphasized that, contrary to the classification of the Joint Committee of Taxation, application of the foreign earned income exclusion is not a "tax expenditure". If the United States based taxation on residence and not citizenship, there would be no need for the foreign earned income exclusion. It is the international reach of U.S. taxation which is the anomaly, not Section 911.

Conclusion

As Chairman Camp stated in calling for hearings on these issues, the U.S. tax system has not been comprehensively reviewed for 50 years and during that period, other nations have lowered their corporate tax rates and have brought their tax policies into conformity with prevailing international practices. If the United States wants to increase its competitiveness, its tax laws must adhere to the competitive setting created by the rest of the world. The measures recommended above all work to bring U.S. taxation in line with worldwide competitive norms and to thereby increase the competitiveness and attractiveness of the United States for investment and export development.

Although the organizations listed below are concerned with a variety of issues pertaining primarily to Americans living and working overseas, we are proud to partner with other citizen groups, such as the 362,000-member National Taxpayers Union (NTU), on several matters of mutual concern that have been discussed in this document. For example, NTU has pledged active support on behalf of many of the goals outlined here, including repealing the cap on the FEIE along with adoption of a territorial corporate tax system and reductions in tax rates. NTU recognizes the importance that wise fiscal policies such as these can have in strengthening the vital link between America's prosperity abroad and the well-being of citizens at home. We look forward to working in tandem toward these ends.

We thank you for your consideration of our views. We would welcome the opportunity to provide a more testimony and information. We request that this written statement be included in the Congressional Record.

Sincerely yours,

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[i] The Economist, May 7, 2011, p. 49.